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COMMITTEE ON ECONOMIC SOCIAL
AND CULTURAL RIGHTS
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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLES 16 AND 17 OF THE COVENANT

Concluding observations of the Committee on Economic, Social and Cultural Rights

JAPAN

1. The Committee on Economic, Social and Cultural Rights considered the second periodic report of Japan on the implementation of the International Covenant on Economic, Social and Cultural Rights (E/1990/6/Add.21) at its 42nd and 43rd meetings (E/C.12/2001/SR.42 and 43), held on 21 August 2001, and adopted, at its 56th meeting (E/C.12/2001/SR.56), held on 30 August 2001, the following concluding observations.

A. Introduction

2. The Committee welcomes the second periodic report of the State party, which was in general conformity with the Committee's guidelines. The Committee welcomes the open and constructive dialogue with the delegation, which consisted of experts on the issues relevant to the Covenant, and its willingness to answer the questions posed by the Committee.

B. Positive aspects

3. The Committee notes that the State party ranks as one of the most developed countries in the world (ninth on the UNDP Human Development Index ranking), with the world's second-largest economy, and that it has achieved high levels of enjoyment of economic, social and cultural rights for the majority of its citizens.

4. The Committee also notes that the State party is the world's largest donor in absolute figures, allocating 0.27 per cent of its GNP to official development assistance (ODA), of which 40 per cent is devoted to areas related to the rights contained in the Covenant.

5. The Committee recognizes the significant role of the State party in promoting international cooperation for the promotion of economic, social and cultural rights in the context of international forums, such as the United Nations and the Organization for Economic Cooperation and Development.

6. The Committee notes with appreciation that the State party has begun to involve national non-governmental organizations in the preparation of its report to the Committee.

7. The Committee takes note that the State party is taking measures to promote gender equality, and in 2000 formulated a Basic Plan for Gender Equality.

8. The Committee welcomes the State party's recent measures aimed at improving the protection of women and children against violence: the Law for Punishing Acts Related to Child Prostitution and Child Pornography and for Protecting Children (1999), the Law on Prohibition of Stalking Behaviour and Assisting Victims (2000) the Child Abuse Prevention Law (2000) and the Law on the Prevention of Spousal Violence and the Protection of Victims (2001). The Committee also welcomes the amendments to the Criminal Procedure Act to protect victims of child abuse and sexual offences during legal proceedings (2001), and the formulation of a Plan of Action against Commercial Sexual Exploitation of Children (2001).

9. The Committee takes note of the fact that the State party has made considerable efforts to cope with the aftermath of the great Hanshin-Awaji earthquake in 1995, and that the national, regional and local authorities have reacted quickly to create temporary, as well as permanent housing for the vast number of persons affected.

C. Principal subjects of concern

10. The Committee is concerned that the State party does not give effect to the provisions of the Covenant in domestic law in a satisfactory manner, despite the fact that many of its provisions are reflected in the Constitution. The Committee is also concerned that provisions of the Covenant are not sufficiently taken into account in the process of legislation and policy formulation, and are rarely mentioned in legislative or administrative proposals or in parliamentary debates. The Committee further expresses concern about the fact that judicial decisions generally do not make reference to the Covenant, on the mistaken ground that none of its provisions has direct effect. It is a further matter of concern that the State party endorses that position, thereby contravening its obligations under the Covenant.

11. The Committee is particularly concerned that the State party has no intention of withdrawing its reservations to articles 7 (d), 8 (2) and 13 (2) (b) and (c), of the Covenant, based on the argument that the State party has to a large extent already achieved realization of the rights enshrined in the aforementioned articles, whereas information received by the Committee reveals that full realization of those rights is not yet guaranteed.

12. The Committee expresses its concern that the State party interprets the principle of non-discrimination as being subject to progressive realization and to "reasonable" or "rationally justifiable" exceptions.

13. The Committee is concerned about the persisting de jure and de facto discrimination against minority groups in Japanese society, and in particular against the Buraku and Okinawa communities, the indigenous Ainu people and people of Korean descent, especially in the fields of employment, housing and education.

14. The Committee is also concerned about the persisting legal, social and institutional discrimination against children born out of wedlock, in particular as regards the curtailment of their inheritance and nationality rights.

15. The Committee expresses its concern about widespread discrimination against women and the de facto inequality that still exists between men and women in Japanese society in professional and decision-making positions, both in political representative bodies, public services and administration, and in the private sector.

16. The Committee expresses its concern regarding the persistent cases of domestic violence, sexual harassment and sexual exploitation of children, in spite of domestic legislation adopted in 2001.

17. The Committee is also concerned about the continuing de facto inequality in wages between men and women for work of equal value, and in particular about the persisting practice in many enterprises of employing women primarily in the clerical services, with little or no chance of promotion to the professional ranks. These inequalities persist despite legislative, administrative and other measures taken by the State party, such as the 1997 amendment to the Equal Employment Opportunity Law.

18. The Committee is concerned that the State party has not ratified certain significant ILO conventions, such as the Abolition of Forced Labour Convention, 1957 (No. 105), the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), and the Indigenous and Tribal Peoples Convention, 1989 (No. 169).

19. The Committee expresses its grave concern that the State party permits excessive working hours in both the public and private sectors.

20. The Committee expresses its concern that from the age of 45 workers run a greater risk of having their salaries reduced or even being laid off without adequate compensation.

21. The Committee is concerned about the general prohibition of strikes for all public employees and civil servants, even those not working in essential governmental services, including teachers. This contravenes article 8 (2) of the Covenant (to which the State party has made a reservation), and the ILO Convention (No. 87) concerning Freedom of Association and Protection of the Right to Organize, despite the existence of alternative systems of personnel committees.

22. The Committee is concerned about reported incidents in nuclear power stations and the lack of transparency and disclosure of necessary information regarding the safety of such installations, and also the lack of advance nationwide and community preparation for the prevention and handling of nuclear accidents.

23. The Committee is also concerned about the consequences of the recent changes to the public pension system, which involved a gradual increase in the age of eligibility from 60 to 65 years. If the retirement age and the age for eligibility for public pension benefits do not coincide, there may be a loss of income for those who are obliged to retire before the age of 65.

24. The Committee is further concerned about the absence of a minimum pension and the persistent de facto gender inequality in the pension system which perpetuates the income gap between men and women.

25. The Committee notes with concern that discrimination against persons with disabilities continues to exist in law and practice, particularly in relation to labour and social security rights.

26. The Committee expresses its concern that the compensation offered to wartime "comfort women" by the Asian Women's Fund, which is primarily financed through private funding, has not been deemed an acceptable measure by the women concerned.

27. The Committee is concerned that despite large resettlement programmes planned and executed by Hyogo Prefecture in the aftermath of the great Hanshin-Awaji earthquake, the population most affected has not always been consulted adequately, and as a consequence many single older persons now live in environments totally unfamiliar to them with little or no personal attention. Apparently, little or no psychiatric or psychological treatment is being offered for people who have lost their families. Many resettled earthquake victims who are over 60 years of age lack community centres, access to health centres and outpatient nursing.

28. The Committee notes with concern that the poorer sections of the population in the Hanshin-Awaji areas affected by the earthquake are finding it increasingly difficult to finance their building reconstruction. Some were forced to sell their property in order to pay off their existing mortgages without being able to rebuild their houses.

29. The Committee is concerned about the large number of homeless persons throughout the country, especially in the Osaka/Kamagasaki area. The Committee is further concerned that the State party has no comprehensive plan to combat homelessness.

30. The Committee is also concerned about forced evictions, especially of the homeless from their temporary abode and those who have occupied houses for a long time in the Utoro district. In this regard, the Committee is particularly concerned about the summary procedure whereby provisional eviction orders are granted by the courts without any reasons being given, under the Court Order of Provisional Disposition Procedure, without being subject to a stay of execution, thus rendering any right of appeal meaningless and in effect transforming provisional eviction orders into permanent ones, in breach of the guidelines of the Committee established in its general comments Nos. 4 and 7.

31. The Committee is concerned about the frequently excessively competitive and stressful nature of all levels of education, which results in school absence, illness, and even suicide by students.

32. The Committee expresses its concern about the fact that there are very limited possibilities for children of minorities to enjoy education in their own language and about their own culture in public schools. The Committee is also concerned about the fact that minority schools, such as Korean schools, are not officially recognized, even when they adhere to the national education curriculum, and therefore neither receive central government subsidies nor are able to provide qualification for university entrance examinations.

E. Suggestions and recommendations

33. The Committee urges the State party to review its position towards its legal obligations arising under the Covenant and that its provisions be interpreted as being directly applicable in practice, as outlined in the Committee's general comments, including general comments Nos. 13 and 14, at least in relation to the core obligations. The State party is further encouraged to introduce "human rights impact assessments", comparable to environmental impact assessments, and other measures to ensure that the provisions of the Covenant are taken into consideration in legislative and administrative policy and decision-making processes.

34. The Committee urges the State party to consider the withdrawal of its reservations to articles 7 (d), 8 (2) and 13 (2) (b) and (c) of the Covenant.

35. The Committee also recommends that the State party improve teaching and training programmes on human rights for judges, prosecutors and lawyers in order to enhance knowledge, awareness and application of the Covenant.

36. While appreciative of the measures undertaken by the State party to promote and protect economic, social and cultural rights, the Committee urges the State party to adopt, through an open and consultative process, a comprehensive national plan of action, in accordance with Part II, paragraph 71, of the Vienna Declaration and Programme of Action. The Committee requests the State party to annex a copy of its national plan of action to its third periodic report, and to explain how the plan promotes and protects economic, social and cultural rights.

37. The Committee urges the State party to increase its efforts to provide international assistance to developing countries and to establish a time frame within which the internationally accepted goal of 0.7 per cent of GNP set by the United Nations will be achieved. The Committee also encourages the State party, as a member of international financial institutions, in particular the International Monetary Fund and the World Bank, to do all it can to ensure that the policies and decisions of those organizations are in conformity with the obligations of States parties to the Covenant, in particular the obligations contained in articles 2 (1), 11, 15, 22 and 23 concerning international assistance and cooperation.

38. The Committee welcomes the State party's indication that it proposes to establish a national human rights institution and urges the State party to do so as soon as possible and in accordance with the 1991 Paris Principles and the Committee's general comment No. 10.

39. The Committee requests the State party to take note of its position that the principle of non-discrimination, as laid down in article 2 (2) of the Covenant, is an absolute principle and can be subject to no exception, unless the distinction is based on objective criteria. The Committee strongly recommends that the State party strengthen its non-discrimination legislation accordingly.

40. While noting that the State party is currently in the process of consultations with Koreans living in the Utoro area regarding their unresolved situation, the Committee recommends that the State party continue to undertake necessary measures to combat patterns of de jure and de facto discrimination against all minority groups in Japanese society, including the Buraku people, the people of Okinawa and the indigenous Ainu, particularly in the fields of employment, housing and education.

41. The Committee urges the State party to remove the concept of "illegitimate children", which is unacceptable in a modern society, from legislation and practice, urgently to take legislative and administrative measures to eliminate all forms of discrimination against children born out of wedlock, and further to restore the Covenant rights of persons so affected (arts. 2 (2) and 10).

42. The Committee urges the State party to implement more vigorously existing legislation and to adopt new legislation with an appropriate gender perspective, with a view to ensuring greater equality of men and women, especially in the fields of employment, labour conditions, wages and representation in higher positions in political representative bodies, public services and administration.

43. The Committee recommends that the State party provide detailed information and statistical data on cases of domestic violence, sexual harassment and sexual exploitation of children. The Committee also recommends that the State party apply strictly its domestic legislation and implement effective sanctions to the persons responsible for such crimes.

44. The Committee strongly recommends that the State party continue to address the issue of de facto inequality between men and women regarding wages for work of equal value by more actively implementing existing legislation, such as the Equal Employment Opportunity Law, and relevant administrative and other programmes and policies, such as the guidelines concerning employment management differentiated by career track, as referred to by the ILO, and by adopting appropriate new measures to that effect.

45. The Committee encourages the State party to consider ratifying ILO Conventions Nos. 105, 111 and 169.

46. The Committee recommends that the State party adopt the necessary legislative and administrative measures to reduce working hours in both public and private sectors.

47. The Committee recommends that the State party take measures to ensure that workers over the age of 45 years maintain their previous levels of wages and job security.

48. The Committee recommends, in line with the ILO, that the State party ensure the right of civil servants and public employees not working in essential services to organize strikes.

49. The Committee recommends increased transparency and disclosure to the population concerned of all necessary information, on issues relating to the safety of nuclear power installations, and further urges the State party to step up its preparation of plans for the prevention of, and early reaction to, nuclear accidents.

50. The Committee recommends that as the age of eligibility for the public pension system gradually increases from 60 to 65 years, the State party undertake measures to secure social security benefits for those retiring before the age of 65.

51. The Committee recommends that the State party incorporate a minimum pension into the national pension system. The Committee further recommends that the persisting de facto gender inequality in the pension system be remedied to the maximum possible extent.

52. The Committee recommends that the State party abolish discriminatory provisions in statutes and that it adopt a law against all kinds of discrimination relating to persons with disabilities. It further urges the State party to continue, and speed up, progress in enforcing the employment rate for persons with disabilities in the public sector that is provided in legislation.

53. The Committee strongly recommends that the State party find an appropriate arrangement, in consultation with the organizations representing the "comfort women", on ways and means to compensate the victims in a manner that will meet their expectations, before it is too late to do so.

54. The Committee recommends that the State party encourage Hyogo Prefecture to step up and expand its community services, in particular to older and disabled persons.

55. The Committee recommends that the State party, in line with its obligations under article 11 of the Covenant, speedily take effective measures to assist poorer earthquake victims in meeting their financial obligations to public housing funds or banks, undertaken to reconstruct their destroyed houses, in order to help them avoid having to sell their properties to meet continuing mortgage payments.

56. The Committee urges the State party to carry out an investigation, on its own and jointly with the prefectures, to assess the extent and causes of homelessness in Japan. The State party should also take adequate measures to ensure full application of the existing laws, such as the Livelihood Protection Law, ensuring an adequate standard of living for the homeless.

57. The Committee recommends that the State party take remedial action to ensure that all eviction orders, and in particular the Court Order of Provisional Disposition Procedure, conform to the guidelines of the Committee specified in general comments Nos. 4 and 7.

58. The Committee strongly recommends that the State party undertake a comprehensive review of the educational system, taking into consideration general comments Nos. 11 and 13 of

the Committee, as well as general comment No. 1 of the Committee on the Rights of the Child. The review should focus in particular on the frequently excessively competitive and stressful nature of all levels of education, which results in school absence, illness, and even suicide by students.

59. The Committee urges the State party to ensure that school textbooks and other teaching materials present issues in a fair and balanced manner which reflects the aims and objectives of education, as set out in article 13 (1) of the Covenant, the Committee's general comment No. 13 and general comment No. 1 of the Committee on the Rights of the Child.

60. The Committee strongly recommends that mother-tongue instruction be introduced in the official curricula of public schools enrolling a significant number of pupils belonging to linguistic minorities. The Committee further recommends that the State party officially recognize minority schools, in particular Korean schools, when they comply with the national education curriculum, and consequently make available to them subsidies and other financial assistance, and also recognize their school leaving certificates as university entrance examination qualifications.

61. The Committee requests the State party to provide more extensive information in its next periodic report on the following issues which could not be sufficiently dealt with in the dialogue: the rights of foreigners, including undocumented workers and apprentices, to just and favourable working conditions, social security and health services, and the rights of patients.

62. The Committee recommends that the State party disseminate its concluding observations widely among all levels of society and inform the Committee of all steps taken to implement them. It also encourages the State party to consult with non-governmental organizations and other members of civil society at an early stage in the preparation of the third periodic report.

63. Finally, the Committee requests the State party to submit its third periodic report by 30 June, 2006, and to include in that report detailed information on the steps undertaken to implement the recommendations contained in the present concluding observations.